IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

***O R D E R***

S.B. CIVIL WRIT PETITION NO. 312/1998

*DIRECTOR, STATE INSURANCE AND PROVIDENT FUND DEPARTMENT, JAIPUR & ANR.*
*Vs.*
*RAJ. CIVIL SERVICES APPELLATE TRIBUNAL, JAIPUR & ANR.*

Date: 16.11.2006.

**HON'BLE MR. K.S. RATHORE, J.**

Mr. B.S. Chhaba, Addl. GA for the petitioners.
None present for the respondents.

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This writ petition is directed against the impugned order dated 22.09.97 passed by the Rajasthan Civil Services Appellate Tribunal, Rajasthan, Jaipur in Appeal No. 908/96. The respondent No.2 Shri Lekh Ram has submitted an application seeking voluntary retirement and the same has been accepted by the petitioner State. The controversy in this case is that as per respondent No.2 Shri Lekh Ram, after accepting the application for voluntary retirement, he moved an application seeking withdrawal of the same and thereafter preferred appeal before the Rajasthan Civil Services Appellate Tribunal (for short 'the Tribunal') and the Tribunal vide its order dated 22.09.97, held

that since the respondent No.2 Shri Lekh Ram has filed an application seeking withdrawal of the voluntary retirement, therefore, the impugned orders dated 27.07.96 and 30.09.96, by which the petitioners have accepted the voluntary retirement, have been quashed and set-aside.

Against the said judgment dated 22.09.97 passed by the Tribunal, the present writ petition has been preferred by the petitioners on the ground that the order impugned is passed by the Tribunal in contravention of the legal principles and rules. Rule 244(1) of the Rajasthan Service Rules clearly gives power to the appointing authority to accept the notice given by the concerned employee who has completed 45 years of age and put in 20 years of service. The respondent No.2 had also submitted application on 13.06.96 seeking voluntary retirement. The application of the respondent No.2 had been accepted by the appointing authority vide order dated 27.07.96 and once the application for voluntary retirement has been accepted, it is a settled law that the same cannot be withdrawn. Merely because the order was to take effect from 30.09.96 would not mean that the respondent No.2 can be allowed to withdraw the voluntary retirement application later on.

In support of his submissions, learned counsel for the petitioners has placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of ***Balbir Singh Negi Vs. Union of India and Others, reported in (1996)8 SCC 283,*** wherein the Hon'ble Supreme Court has held that the entitlement to withdraw the application for voluntary retirement was accepted by this Court. It is seen that in this case, admittedly, the petitioner has stated that he was on leave for one year prior to the date of seeking voluntary retirement on medical grounds and he was unable to discharge the duties and that, therefore, he had sought to voluntarily retire from service. When he was transferred from Shimla to Faridabad, he had submitted his application in a huff for voluntary retirement and that thereafter he came forward with the application for withdrawal. It is true that the petitioner was entitle to withdraw the resignation. But in view of the fact that he has already attained the superannuation in normal circumstances on 28.02.94, no useful purpose will be served by giving direction to permit him to withdraw his application.

Here in the instant case also, during the pendency of the writ petition, the petitioner attained the superannuary age. The operation of the impugned

order dated 22.09.97 passed by the Tribunal has been stayed by this Court vide ex parte interim order dated 06.02.98 meaning thereby this order was not given effect.

In view of the ratio decided by the Hon'ble Supreme Court in the aforementioned case of ***Balbir Singh Negi (supra),*** as the petitioner attained the superannuary age, therefore, there is no use to enter into the merits of the case.

Consequently, the writ petition stands allowed and the impugned order dated 22.09.97 passed by the Rajasthan Civil Services Appellate Tribunal, Rajasthan, Jaipur is hereby quashed and set-aside.

**(K.S. RATHORE),J.**

/KKC/